IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY PETITION No 51 of 2003
WITH
COMPANY PETITION No 52 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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INTERKILN INDUSTRIES LTD.

Versus

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Appearance:

1. COMPANY PETITION No. 51 of 2003

MRS SWATI SOPARKAR for Petitioner No. 1

..... for Respondent No. 1

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CORAM : HON'BLE MR.JUSTICE C.K.BUCH

Date of decision: 05/09/2003

CAV JUDGEMENT

1. Heard ld. counsel Ms. Swati Soparkar for the petitioner companies and ld. Addl.Central Govt. Standing Counsel Ms. P.J.Davawala.

2. These two petitions are filed by two petitioner companies for sanction of a Scheme of arrangement in the nature of de-merger and transfer of Vadavswami Division (Calcination Project) of Interkiln Industries Ltd. ( the De-merged/ Transferor Company) to Interkiln Ceramics Ltd. (the Resulting/ Transferee Company) under section 391 read with Section 394 of the Companies Act,1956 (hereinafter referred to as the Act).

3. Both the petitioner companies are public limited companies. The De-merged/ Transferor Company (IIL) is engaged in manufacturing of wide range of industrial refractories. It had diversified and undertaken the project for Calcinated materials. The Resulting/ Transferor Company (ICL) is recently incorporated with a view to take over the Calcination project of IIL which is yet in the stage of commissioning. The de-merger and transfer of the Calcination Project of IIL to ICL is proposed to have different growth strategies and survival plans for two specialised products of the company. The petitions give details of the reasons and expected advantages that would flow by virtue of the arrangement between these companies.

4. The meetings of the shareholders and the secured creditors of the De-merged/Transferor Company were duly convened and the resolutions approving the said scheme of arrangement were carried unanimously at both the meetings. The meeting of the unsecured creditors was dispensed with in view of the consent letters from all the unsecured creditors of the company approving the scheme being put on record.

5. In case of Resulting/Transferor Company, the meeting of the shareholders was dispensed with in view of the consent letters from all the shareholders of the company approving the scheme being put on record.

6. After the petitions were admitted, the same were duly advertised in the newspapers ( The Indian Express and Loksatta-Jansatta Ahmedabad Editions dated 8.3.2003 as per the order) and the publication in the Govt.Gazettee was dispensed with as directed in the order dated 28.2.2003. No one has come forward with any objections to the said petitions even after the publication.

7. Notice of the petitions has been served upon the Central Government and Smt. P.J.Davawala, ld. Addl.Central Govt.Standing Counsel appeared and on

19.8.2003, she placed on record the letter from the Registrar of Companies dated 4.8.2003 along with the letter of the Regional Director dated 24.7.2003 wherein the Regional Director has raised certain issues with regard to various clauses of the Scheme. These issues pertain to the special resolution pertaining to Reduction of Capital under Section 100 of the Act and the appointed date being prior to the date of incorporation of the Transferee Company. The additional affidavit dated 11.8.2003 filed by the Director of the petitioner companies was also placed on record on 19.8.2003. Said affidavit deals with all these issues and gives detailed explanations and justifications of the said clauses of the scheme.

8. Considering the issues raised by the Regional Director and the additional affidavit of the Director of the petitioner companies giving detailed explanations and justifications and considering the submissions made by ld. counsel appearing for the parties and having gone through the petitions, this Court is satisfied that the proposed arrangement would be in the interest of the companies and their members and creditors. Hence, prayers in terms of paragraph 20(A) of the Company Petition No.51/2003 and in terms of Para 15(A) of the Co.Petition No.52/2003 are hereby granted.

9. The petitions are disposed of accordingly. So far as the costs to be paid to the Addl.Central Govt. Standing Counsel is concerned, I quantify the same at Rs.3,500/ per petition. The same may be paid to ld. counsel Ms. P.J.Davawala for the Transferor Company and Shri D.N. Patel for the Transferee Company.

[C.K. BUCH, J ]

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